

DEFICIENCY PROGRESS REPORT – UPDATE 1

April 18, 2008

CUPA: TRINITY COUNTY CUPA

Evaluation Date: October 31 and November 1, 2007

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Status: Deficiencies 1, 2, 4, 5, 6, 7, 8, 9, 10, 12, 14, and 15 remain outstanding.

Next Progress Report (2nd Update) Due: July 18, 2008

1. **Deficiency:** The CUPA is not collecting enough fees from the regulated businesses to cover their expenses. For example, based on their fee accountability, the CUPA had a deficit of approximately \$19,000 in fiscal year (FY) 05/06 and \$6,000 in FY 06/07.

Preliminary Corrective Action by December 3, 2007: The CUPA is in the process of reviewing their overall program expenses and fees to ensure that their total budget covers their expenses to achieve a stable program. By December 3, 2007, the CUPA will work with Cal/EPA to develop a FY 07/08 single fee schedule.

CUPA Corrective Action (March 20, 2008): This deficiency is on track to be corrected this Fiscal Year (FY). The following is a summary of the steps the CUPA has taken:

On November 28, 2007, the CUPA sent an e-mail to Cal/EPA that included itemized CUPA costs and projected revenue for FY 07/08, the CUPA shortfall amounts for FY 05/06 and FY 06/07, and proposed revised CUPA fees for Trinity County. The same day, CUPA and Cal/EPA representatives met by telephone to discuss the fiscal situation. Cal/EPA requested additional information regarding workload analysis and revenue streams. This information was provided to Cal/EPA later that same day. These actions were taken before the deadline of December 3, 2007, given by the initial Cal/EPA Evaluation Summary of Findings for this deficiency.

Cal/EPA deemed these CUPA submittals to be unsatisfactory. On January 16, 2008, the CUPA met with Cal/EPA to discuss Cal/EPA's reviews on the fee proposal. Cal/EPA told the CUPA that the CUPA could not make up the shortfall from FY [05/06] and FY 06/07 by the end of June 2008. Cal/EPA told the CUPA that this shortfall must be spread out over two or three years.

On February 27, 2008, the CUPA met with Cal/EPA with revised CUPA costs and projected revenue for FY 07/08, FY 08/09 and FY 09/10, detailed itemized costs for these FYs, current and proposed CUPA fees, and a summary of fees for county CUPAs

nearby Trinity County. This information showed that the CUPA will reduce work for this fiscal year (FY 07/08) and increase fees and work the following two fiscal years (FY 08/09 and FY 09/10) to balance the CUPA budget.

On March 3, 2008, the CUPA sent Cal/EPA a cover letter with the revised documents they had discussed on February 27, 2008. On March 6, 2008, the CUPA met with the Secretary for Environmental Protection at Cal/EPA, Linda S. Adams. Ms. Adams approved public notice of the proposed fee increase, and the signed notice was sent to the Office of Administrative Law. The Regulations Notice will be published on March 21, 2008, and the comment period will run from March 21, 2008 to April 20, 2008. At the end of the comment period, CUPA staff and Cal/EPA will prepare an expedited response to comments and publish the final fee schedule. Once this is done, the CUPA will issue CUPA invoices for FY 07/08 with the increased fee amount. It is anticipated that this will occur around the middle of May 2008.

Cal/EPA Comments to March 20, 2008, Corrective Action: *The CUPA has made great progress toward correcting this deficiency. On the next update, due on July 18, 2008, please continue to update Cal/EPA on the CUPA's progress.*

2. **Deficiency:** The CUPA's FY 05/06 and FY 06/07 Self-Audit Reports were missing a required element. The reports were missing the narrative summary of the effectiveness of activities on permitting.

Preliminary Corrective Action by October 15, 2008: The CUPA will submit their FY 07/08 Self-Audit Report that contains all the required elements.

CUPA Corrective Action (March 20, 2008): The CUPA will begin issuing UST permits in March 2008. The CUPA has developed a standardized format in the Self-Audit Report to include the narrative summary of the effectiveness of activities on permitting, which will help ensure all required information is included. This information will be included in the FY 07/08 and subsequent Self-Audit Reports.

Cal/EPA Comments to March 20, 2008, Corrective Action: *Cal/EPA appreciates the CUPA's effort in developing a format for its self audit report to include the missing element (permitting). However, this deficiency remains a correction in progress. To encompass all permitting activities, the CUPA is also strongly encouraged to review and continue to follow its consolidated permit policy and procedure (section 7 of the November 2004 Trinity County CUPA application) and the permitting section (15190) of the California Code of Regulations, Title 27. On the next update, due on July 18, 2008, please continue to update Cal/EPA on the CUPA's progress toward correcting this deficiency, including the effectiveness of issuing the (consolidated) permits.*

3. **Deficiency:** The CUPA does not have a mechanism to receive comments or feedback from the public or regulated business community, such as a customer service survey form.

Preliminary Corrective Action by March 20, 2008: The CUPA will develop a survey or questionnaire to obtain feedback or comments from the public and regulated facilities.

The survey or questionnaire should be readily available at the CUPA's office, mailed to the regulated businesses, provided to the regulated businesses at the conclusion of each visitation, outreach or inspection, and/or, if possible, be readily available at Trinity County Environmental Health's office.

CUPA Corrective Action (March 20, 2008): The CUPA has developed a Customer Service Survey form. The CUPA will be mailing this form, along with the annual Business Plan Update form, also developed by the CUPA, in March 2008. The Customer Service Survey form will also be mailed to those businesses that are subject to CUPA requirements, but not to the Business Plan requirements, in March 2008. The CUPA will make arrangements for the Trinity County Environmental Health Department to have copies of this survey form available in their office.

Cal/EPA Comments to March 20, 2008, Corrective Action: *The CUPA has satisfactorily corrected this deficiency. No further update is required.*

4. **Deficiency:** The CUPA is not fully tracking and reporting violations information and enforcement actions taken on their Annual Enforcement Summary Reports.

Preliminary Corrective Action by September 30, 2008: By September 30, 2008, the CUPA will ensure that the violations and enforcement data on the Annual Enforcement Summary Report 4 will be complete and as accurate as possible.

CUPA Corrective Action (March 20, 2008): The CUPA is now including informal enforcement actions in the tracking of violation and enforcement data. We will include this information in the next Annual Enforcement Summary Report 4 form.

Cal/EPA Comments to March 20, 2008, Corrective Action: *This deficiency remains outstanding. While the CUPA has begun including informal enforcement actions on their enforcement data tracking system, the CUPA also needs to ensure that all facilities that have been cited for a violation is also included. On the next progress report, due on July 18, 2008, please continue to update Cal/EPA on the CUPA's progress toward correcting this deficiency. Note: the new Annual Enforcement Summary Report form, which is available on the Cal/EPA Unified Program website (<http://www.calepa.ca.gov/CUPA/Publications/>), now requires violations information to be classified (Class I, Class II or Minor) for all Unified Program elements.*

5. **Deficiency:** The CUPA is not inspecting each business plan facility at least once every three years. The Annual Inspection Summary Reports indicate that no business plan

facility was inspected in FY 05/06 and FY 06/07. However, the CUPA has made progress; they inspected at least 14% business plan facilities to date for FY 07/08.

Preliminary Corrective Action: On an annual basis, the CUPA will inspect approximately a third of its business plan facilities. Beginning March 20, 2008, the CUPA will submit a status of their progress, including the number of facilities inspected.

CUPA Corrective Action (March 20, 2008): The CUPA has developed an inspection schedule for all Trinity County CUPA businesses currently regulated under one of the CUPA programs, as well as those we expect to complete outreach on. This schedule allows inspection of all business identified as subject to CUPA regulation to be inspected within three years. The CUPA will monitor its success in meeting this schedule to ensure facilities are inspected regularly.

Cal/EPA & OES Comments to March 20, 2008, Corrective Action: *Based on the CUPA's schedule of inspections, the CUPA has inspected at least 18 percent of its business plan facilities for this fiscal year (07/08) as of March 20, 2008. The CUPA has increased their number of inspections by an additional four percent since the CUPA's evaluation. The CUPA's goal is to inspect at least 10 percent more of its business plan facilities (35 of 126 total) for this fiscal year, 34 percent for FY 08/09, and 35 percent for FY 09/10. The CUPA is strongly encouraged to continue to follow its inspection schedule. On the next progress report, due on July 18, 2008, please continue to update Cal/EPA on the CUPA's progress toward correcting this deficiency, including the number of business plan facilities and the number of facilities inspected for routine compliance.*

6. **Deficiency:** The CUPA is not requiring businesses, subject to the hazardous materials reporting requirements, to annually submit their hazardous material inventory or certification statement of no change.

Preliminary Corrective Action by March 20, 2008: By March 20, 2008, the CUPA will develop a strategy and begin implementation of a plan to ensure all regulated businesses annually submit their hazardous material inventory or certification statement.

CUPA Corrective Action (March 20, 2008): The CUPA developed an annual Business Plan Update form and will mail it to the regulated CUPA businesses in March 2008. The CUPA is tracking businesses, the dates their annual updates of the chemical inventories and triennial certifications of their entire Business Plan are due and the dates the CUPA will send reminder letters to the businesses. The CUPA plans to mail the Business Plan Update form to regulated businesses 30 days before an update is due.

Cal/EPA & OES Comments to March 20, 2008, Corrective Action: *This deficiency is in the process of being corrected. On the next update, due on July 18, 2008, please*

submit the number of businesses that have filed inventory certifications (of “no change”) and also the number of businesses that submitted new inventories based on the Business Plan Update forms sent to the facilities since March 2008. Also, please submit a sample of an inventory certification statement of “no change” received from a facility.

- 7. Deficiency:** The CUPA is not inspecting each facility that is subject to the California Accidental Release Prevention (CalARP) program at least once every three years. The Annual Inspection Summary Reports indicate that no CalARP facility was inspected in FY 05/06 and FY 06/07. In addition, the CUPA has inspected no CalARP facility to date for FY 07/08.

Preliminary Corrective Action: By December 31, 2007, the CUPA will develop a strategy and begin implementation of a plan to ensure adherence to the triennial inspection frequency requirement.

Beginning March 20, 2008, the CUPA will submit a status of their progress, including the number of facilities inspected.

CUPA Corrective Action (March 20, 2008): The CUPA has developed a strategy and had begun implementation of a plan to ensure adherence to the triennial inspection frequency requirement.

The CUPA will take the following steps in beginning the implementation of the CalARP program:

1. Identify CalARP facilities and verify their regulatory status.
2. Develop a CalARP Registration Form. This has been done.
3. Develop a CalARP Fact Sheet. This has been done.
4. For each CalARP stationary source, make a “Preliminary Risk Determination” as to whether or not the facility poses an accident risk. Based on this determination, the CUPA may require the submittal of the Risk Management Plan (RMP), or exempt the facility from the provisions of the CalARP program.
5. Call in the RMPs after the Preliminary Risk Determination.
6. Conduct the RMP review process.
7. Conduct facility inspections.
8. Conduct facility audits.
9. Maintain close coordination with the facility owner/operator.

The CUPA has not yet inspected a CalARP business. The CUPA has scheduled one CalARP inspection for FY 07/08, two CalARP inspections for FY 08/09, one of which has three stationary sources, and two CalARP inspections for FY 09/10. The CUPA will move up these inspections if resources allow. The CUPA is continuing to research CalARP requirements and has tentatively identified three additional CalARP facilities.

The inspection of these additional facilities will be incorporated into the inspection schedule for FY 07/08, FY 08/09 and FY 09/10, as their regulatory status is verified.

Cal/EPA & OES Comments to March 20, 2008, Corrective Action: *The CUPA has developed a plan to correct this deficiency, including a frequency of inspections for the current fiscal year and the next two fiscal years. However, the CUPA currently continues to identify and verify its CalARP facilities, as well as inspect at least one CalARP facility for this fiscal year. Therefore, this deficiency remains outstanding. On the next update, due on July 18, 2008, please report the CUPA's progress toward implementing its plan.*

- 8. Deficiency:** The CUPA has not completed an annual CalARP performance audit.

Preliminary Corrective Action by July 1, 2008: The CUPA will complete the FY 07/08 CalARP performance audit. Annually thereafter, the CUPA may incorporate the CalARP performance audit with the Unified Program FY 07/08 Self-Audit Report.

CUPA Corrective Action (March 20, 2008): The CUPA will complete the FY 07/08 CalARP performance audit by July 1, 2008. The CUPA has developed a standardized format in the Self-Audit Report to include the CalARP performance audit, which will help ensure all required information is included. This information will be included in the FY 07/08 and subsequent Self-Audit Reports.

Cal/EPA & OES Comments to March 20, 2008, Corrective Action: *The CUPA has incorporated a section for the CalARP performance audit within the annual self audit report. The CUPA must ensure that every element of the California Code of Regulations title 19, section 2780.5 is addressed if the annual self audit is also to serve as a CalARP performance audit. This deficiency will remain outstanding until the next annual submittal of the self audit report.*

- 9. Deficiency:** The CUPA has not established a procedure necessary to implement a dispute resolution between the CUPA and stationary sources.

Preliminary Corrective Action by June 18, 2008: The CUPA will develop a CalARP dispute resolution procedure.

CUPA Corrective Action (March 20, 2008): The CUPA has developed a draft CalARP dispute resolution procedure and will be working with the Governor's Office of Emergency Services to ensure that it is complete.

Cal/EPA & OES Comments to March 20, 2008, Corrective Action: *The draft procedure submitted satisfies the requirements of California Code of Regulations title 19, section 2780.1. Once this procedure has been finalized, this deficiency will be corrected.*

10. Deficiency: The CUPA is not conducting hazardous waste generator inspections with a frequency consistent with their Inspection and Enforcement Program Plan, which is triennial. The Annual Inspection Summary Reports indicate that no hazardous waste generator facility was inspected in FY 05/06 and FY 06/07. However, the CUPA has shown progress; they inspected at least 16% hazardous waste generator facilities to date for FY 07/08.

Preliminary Corrective Action: By December 31, 2007, the CUPA will develop a strategy and begin implementation of a plan to ensure adherence to the triennial inspection frequency requirement as noted on their Inspection and Enforcement Program Plan. Beginning March 20, 2008, the CUPA will submit a status of their progress, including the number of facilities inspected.

CUPA Corrective Action (March 20, 2008): The CUPA has developed an inspection schedule for all Trinity County businesses, including hazardous waste generators, currently regulated under the CUPA program, as well as those we expect to complete outreach on. This schedule allows inspection of all business identified as subject to CUPA regulation to be inspected within three years.

Cal/EPA & DTSC Comments to March 20, 2008, Corrective Action: *The CUPA is in the process of correcting this deficiency. Approximately 18 percent of its hazardous waste generators have been inspected this fiscal year (as of March 20, 2008). The CUPA is expected to inspect an additional eight percent to reach its goal of 26 percent for FY 07/08. The CUPA is strongly encouraged to continue to follow its schedule of inspections. On the next progress report, due on July 18, 2008, please update Cal/EPA on the CUPA's progress toward correcting this deficiency.*

11. Deficiency: The CUPA is not implementing their Inspection and Enforcement Program Plan as mandated by law. For example, on one of the nine available files reviewed, the CUPA is not implementing the enforcement process for minor violations that have not been corrected.

Preliminary Corrective Action: Beginning November 30, 2007, the CUPA will implement the enforcement process as outlined in their Inspection and Enforcement Program Plan.

CUPA Corrective Action (March 20, 2008): The CUPA has begun implementing the enforcement process for violations cited during inspections. The CUPA has developed a letter to be sent to businesses who have not submitted the signed Certification of Compliance portion of their inspection report certifying that they have corrected all violations. The CUPA has begun to send this letter to all businesses who have not returned the signed Certification of Compliance portion of their inspection report within the required time.

Cal/EPA & DTSC Comments to March 20, 2008, Corrective Action: *The CUPA has satisfactorily corrected this deficiency. No further update is required.*

- 12. Deficiency:** The CUPA is not accurately documenting violations on their inspection reports. On the list of inspections provided by the CUPA, one of the nine hazardous waste generator facilities inspected to date had a Class II violation. However, the Summary of Violations included in the actual facility file did not mention the degree of violation.

Preliminary Corrective Action: Beginning November 1, 2007, the CUPA will document all violations on their inspection reports.

CUPA Corrective Action (March 20, 2008): The CUPA has revised all Business Plan, Hazardous Waste Generator, and CalARP inspection checklists to include a column for indicating that the violation is minor, Class II or Class I. The Underground Storage Tank checklist is being revised and will also have a place on the checklist to indicate the violation classification. The CUPA has developed an inspection protocol which, among other things, addresses the need to classify each violation as minor, Class II or Class I.

Cal/EPA & DTSC Comments to March 20, 2008, Corrective Action: *The CUPA is in the process of correcting this deficiency. Although the inspection checklist has been developed, it has not been utilized by the CUPA on any inspections to date. On the next progress report, due on July 18, 2008, please update Cal/EPA and DTSC on the actual usage of this new documentation system.*

- 13. Deficiency:** The CUPA does not issue Permits to Operate to the Underground Storage Tank (UST) facility owners/operators. This is one of the primary requirements for the UST Program, and the basis by which facilities are allowed to operate. The Permit is based on compliance with paperwork submittals, facility operational compliance, etc.

Preliminary Corrective Action: By March 20, 2008, the CUPA will develop a permit form and permit conditions with all the required elements and provide to the SWRCB for review. By June 18, 2008, the CUPA will collect current application forms and other required permit paperwork from all facilities. The CUPA will determine compliance and issue operating permits for all compliant UST facilities.

CUPA Corrective Action (March 20, 2008): The CUPA has developed a UST permit form and will begin issuing UST permits in March 2008, to those UST businesses that are in compliance with the UST law and regulations.

Cal/EPA & SWRCB Comments to March 20, 2008, Corrective Action: *The CUPA has satisfactorily corrected this deficiency. No further update is required.*

- 14. Deficiency:** The CUPA has not approved Monitoring/Response Plans or Plot Plans. These are part of the required paperwork submittals for all UST facilities as part of their

monitoring program. They should clearly reflect true conditions at the facility and the CUPA needs to ensure that they are complete and fit the situations at the facility. By approving these plans the CUPA accepts the procedures that are proposed for the facility.

Preliminary Corrective Action: As part of the permitting process (above) the CUPA will review and approve monitoring/response plans and plot plans and provide approval for acceptable monitoring programs. By March 20, 2008, the CUPA will develop a plan/process for approving these items as part of their standard operating procedures.

CUPA Corrective Action (March 20, 2008): The CUPA has developed a procedure to review existing Monitoring Plans, Response Plans, and Plot Plans to ensure their completeness and accuracy. The CUPA has begun implementation of this procedure. The CUPA plans to continue implementation of this procedure, as resources allow, until all plans are complete and accurate.

Cal/EPA & SWRCB Comments to March 20, 2008, Corrective Action: *Cal/EPA and SWRCB appreciate the progress that the CUPA has made toward correcting this deficiency. However, this deficiency remains a correction in progress. On the next update, due on July 18, 2008, please provide a detailed documentation of the procedure. For example, what criteria or elements are examined on the plans, and how the approval will be given to the UST facilities.*

- 15. Deficiency:** Monitoring/Response and Plot Plans do not have all of the required elements. Some of the plans that were submitted were incomplete and/or did not have all of the required elements.

Preliminary Corrective Action: As part of the permitting process (above) the CUPA will ensure that the submitted plans have all of the required elements, before approving the plan.

CUPA Corrective Action (March 20, 2008): The CUPA has developed a procedure to review existing Monitoring Plans, Response Plans, and Plot Plans to ensure their completeness and accuracy. The CUPA has begun implementation of this procedure. The CUPA plans to continue implementation of this procedure, as resources allow, until all plans are complete and accurate.

Cal/EPA & SWRCB Comments to March 20, 2008, Corrective Action: *Similar to the above (deficiency 14), this deficiency remains a correction in progress. On the next update, due on July 18, 2008, please provide a detailed written procedure.*